

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7000 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAMAKSHKIBAR MAURAYA

Versus

THE UNION OF INDIA

Appearance:

MS DR KACHHAVAH for Petitioner

MR JC SHETH for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/09/1999

ORAL JUDGEMENT

The said petition has been taken up for Final Hearing on 22nd September 1999. Ld. advocate DR Kachchava is appearing on behalf of the petitioner and Ld. advocate shri JC Sheth appearing on behalf of the respondent No.1 to 4. Today, when the matter was called out, nobody was present either from petitioner as well as from the respondent. The matter is relating to the year 1987, a

very old matter and same was admitted way back on 23rd January, 1991.

In the present petition, the petitioner has challenged the order passed by the Labour Court, Ahmedabad (Recovery Application No. 70/82) decided on 15th December, 1983. The Labour Court, Ahmedabad in paragraph 24 of the order, partially allowed the recovery application and directed the respondent that petitioner is entitled to the scale of Rs.105 - 135 w.e.f. 7th January 1970, instead of scale of Rs.80-110 from that date. The Labour Court has further directed that, progressively connected revised scale is from time to time for the post. The respondent Railway to pay the difference and due amount to the petitioner within the period of 3 months from the date of the receipt of the copy of the order and additionally pay to the petitioner on account of cost of Rs.1000/-. The rest of the claim of the petitioner is hereby rejected. The petitioner has challenged the claim which was rejected by the Labour Court in the present petition SCA No.7000/87.

Before the Labour Court, the case of the petitioner was that the petitioner was working as Store Issuer from 7th January, 1970 in the pay scale of Rs.105-135 (A) the case of the petitioner was that the service of the petitioner further up graded as per the circular dtd. 3rd November 1972 to the post of material clerk in the grade of Rs.110-180(A) w.e.f. 1st October, 1972. The claim of the petitioner for up grade Rs.110-180 for the post of material clerk as per the circular dtd. 3rd November 1972 was rejected by the Labour Court.

The Labour Court has considered the submission of the applicant and discussed the evidence in para 5. The Labour Court observed that according to the Railway it is an admitted fact that the applicant served as store issuer in the grade of Rs.80-110 (A) from 7th January 1970. but according to the Railway, applicant was not entitled to the grade of Rs.105-135 (A) from 7th January 1970. The Labour Court, Ahmedabad has come to the conclusion that, the petitioner is entitled to the scale of Rs.105-135(A) instead of scale of Rs.80-110 w.e.f. 7th January 1970. But the applicant was not in terms of Railway Board's letter dtd. 26th October, 1972, reproduced in letter of GM(S) 3rd November 1972. The Labour Court has further stated in para 12 that exh. 8 is produced and abstract which applied to the group No.12 and pertaining to the store staff of the department, the pay rules came in force in the year 1960. In exh. 8, the pay scale mentioned is fixed at Rs.105-135. Therefore, the exh. 8

is a abstract from the pay rule 1960 sanctioned for all the store staff of all the department of Railway Board. issued by the highest body. Hence, against that direction, the authority is not entitled to pay lesser pay scale for the store issuer.

The Labour Court further came to the conclusion that in Railway Board letter dtd. 17th Sept. 1965, the direction was that, the store issuer performing all 2 duties (1) out of 7 listed in para 1 (4), therefore, unless, applicant proves that he has been doing 2 duties out of 7 duties, listed in the said letter of Railway Board, dtd. 27th Sept. 1963 and referred to exh. 1/1, dtd. 2nd November 1972 issued by the General Manager. The applicant would not be entitled to the scale of Rs.110-180 mentioned in exh. 1/1 dtd. 3rd November 1972. The Labour Court further came to the conclusion that there is no proof in this case produced by the applicant that the applicant was doing 2 duties out of 7 duties listed in the railway board's letter dtd. 27th Sept. 1963. In this connection, exh. 11 dtd. 14th Nov. 1975, was considered by the Labour Court, but only letter has been addressed to the, Chief Engineer (E) SPI, and the copy addressed to the present applicant. It did not meant that the present applicant was doing all 7 duties mentioned in exh. 11. It cannot be mentioned that, the railway authority has made detail inquiry and found that only KB Nair was working, was doing 2 duties out of 7 duties as mentioned in Railway Board Letter dtd. 27th November, 1963. In this respect, the Dy. Chief Engineer vide exh. 17/4, found that he was doing 2 duties out of 7 duties as prescribed in the Railway Board's letter dtd. 27th Sept. 1963. The numbers of which Labour Court has stated earlier and therefore, the Labour Court has negatived the claims of the applicant in respect of the application in respect of claiming the benefits of scale of Rs.110-180 w.e.f. 1st October, 1972.

On considering the discussions and reasoning given by the Labour Court, in its order dtd. 15th December, 1983, the Labour Court has not committed any error in examining the claim of the applicant in detail and discussed all the relevant circulars and came to the fact having considered the letter dtd. 9th march 1978, exh. 17/4, are of Dy. Chief Engineer, Sabarmati, that the applicant was not doing 2 out of 7 duties prescribed in Railway Board's letter dt. 27th Sept. 1963. There is no infinity in the order an there is no error has been committed by the Labour Court to appear on the face of record. Apart from this fact, the claim of the petitioner for which he file

the recovery application before the Labour Court U/s. 33(c)(2) of the I.D. Act claiming up gradation promotion to the higher post and higher salary which does not amount to existing rights of the petitioner because, the same is disputed by the respondent. The scope under Sec. 33(c)(2) is very much limited and only principle existing rights can be agitated by the petitioner for claiming the benefits which he is entitled under the Law or under the Services conditions.

In view of this fact, according to me, for claim of up gradation, promotions and higher salary, for the said post, Industrial Dispute is required to be raised under the provisions of the Industrial Disputes Act 1947. Therefore, in view of this fact, it is open for the petitioner if so advised to raise the Industrial Dispute for claiming up gradation and higher post and pay scale which has been claimed in recovery application and rejected by the Labour Court and at that occasion, the findings of the Labour Court, Ahmedabad, inspite of rejecting the claim under the provisions of Sec. 33(c)(2) will not come into the way for raising the Industrial Dispute, claiming such benefit by the petitioner.

Even if the Industrial Dispute is raised by the petitioner, then delay aspect may not come in the way because, the petition of 1987 has been decided on 22nd Sept. 1999. Obviously, the pendency of this petition will not be considered a delay for raising the dispute if ultimately raised by the petitioner.

In view of these observations, I find that there is no merits in the petition and order passed by the Labour Court, Ahmedabad is perfectly all right and no interference is required while exercising the power under Art. 226 and 227 of the Constitution of India. Hence, the petition is rejected. Rule is discharged. No orders as to costs.

/sanjay/.